

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DEF
CIM

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BANK OF THE WEST, as assignee of
GANIS CORPORATION,

Plaintiff,

-against-

MEMORANDUM AND ORDER

Case No. CV-05-6004 (FB) (SMG)

M/V NEVER SAY NEVER, her engines,
tackle, apparel, appurtenances, etc.,
having Official No. 587514 and Hull Serial
No. 47304m77, *in rem*; and SANTO
SILLARO, *in personam*,

Defendants.
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Appearances

For the Plaintiff:

STEVEN C. TAITZ, ESQ.
Roe Wallace Esteve Taroff & Taitz LLP
Post Office Box
Patchogue, NY 11772

For the Defendants:

JACK A. GREENBAUM, ESQ.
Blank Rome LLP
405 Lexington Avenue
New York, NY 10174

BLOCK, Senior District Judge:

On September 11, 2008, the Clerk of the Court entered a money judgment in favor of plaintiff, Bank of the West ("the Bank"), and against defendant *in personam* Santo Sillaro ("Sillaro") and defendant *in rem* M/V Never Say Never ("the Vessel"). Sillaro has appealed the judgment, but has not posted any *supersedeas* bond or otherwise sought a stay pending appeal.

The Bank now seeks to execute on the judgment by moving for an order directing the sale of the Vessel. Sillaro has not submitted any opposition to the motion. There appearing no reason why the Vessel should not be sold, the Bank's motion is granted

as follows:

1. The Marshal is directed to sell the Vessel, "as is where is," to the highest and best bidder on at least one calendar week's notice.
2. The Bank shall cause notice of the sale to be published in *Newsday* for at least six (6) consecutive days prior to the sale. The notice shall be in the form annexed to this Memorandum and Order.
3. The Bank may bid on the Vessel up to the value of its lien with no payment required; provided, however, that the Marshal's commission, administrative expenses and any amount in excess of the Bank's lien must be paid on the terms for third-party bidders set forth in the notice of sale.
4. The following shall be taxed as administrative expenses against the proceeds of the sale:
 - (a) All fees, commissions and charges incurred by the Marshal and the Court-appointed Substitute Custodian with respect to maintenance, custody and insurance of the Vessel.
 - (b) All charges incurred by the Bank in connection with the arrest of the Vessel, including the costs of storage, wharfage, dockage, security, maintenance, towage, berth shifting, insurance and any other miscellaneous expenses relating to the Vessel while under arrest.
 - (c) All costs incurred with respect to the notice of sale.
5. The sale shall be subject to confirmation by the Court. Any objections to the sale must be filed with the Court, with service on all parties, within ten (10) calendar

days of the sale.

6. All proceeds of the sale shall be deposited into the interest-bearing account of the Court's registry. Upon confirmation of the sale, the Bank shall apply to the Court for an order disbursing the proceeds; the application may include a request for fees and costs incurred since entry of judgment.

7. Upon disbursement of the proceeds, the Court will enter an amended judgment against Sillaro for any amount, including the Bank's post-judgment fees and costs, unsatisfied by the sale of the Vessel.

SO ORDERED.

s/Frederic Block

FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
January 23, 2009

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

st9563

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BANK OF THE WEST, as assignee of GANIS
CORPORATION,

05 CV 6004 (FB) (SMG)

IN ADMIRALTY

Plaintiff,

- against -

M/V NEVER SAY NEVER, her engines, tackle,
apparel, appurtenances, etc., having Official No.
587514 and Hull Serial No. 47304m77, *in rem*; and
SANTOS, SILLARO, *in personam*,

Defendant.
-----X

UNITED STATES MARSHAL'S SERVICE
NOTICE OF UNITED STATES MARSHAL'S SALE

By virtue of an Order of Sale issued out of the United States District Court for the Eastern District of New York, on the _____ day of _____, 2009, notice is hereby given that I will sell by public auction, for cash, cashier's or certified check, drawn on a bank in Suffolk County, Nassau County, Kings County, Richmond County or New York City, on _____, 2009, at _____ a.m./p.m., at Yachtsman's Cove, located at S. Main Street, Freeport, New York, the M/V NEVER SAY NEVER, her engines, tackle, apparel, appurtenances, etc., as she now lies at Yachtsman's Cove, located at S. Main Street, Freeport, New York. The successful bidder shall deposit with the U.S. Marshal at the close of said sale, ten percent (10%) of the bid

price by cash, cashier's or certified check drawn on a bank in Suffolk County, Nassau County, Kings County, Richmond County or New York City. Balance to be paid within forty-eight (48) hours after confirmation by the Court. Failure to pay in accordance with the terms of the sale will result in the forfeiture of the monies deposited.

Plaintiff may bid up to the amount of its lien at that sale and if plaintiff is the highest bidder, it will not make any cash payment, other than a Marshal's commission, administrative expenses, and any amounts in excess of its lien.

The sale shall be subject to confirmation or rejection by the Court. If the sale should not be confirmed, the United States Marshal shall return the deposit to the highest bidder immediately after rejection of the bid by the Court. The vessel may be inspected at your own risk at Yachtsman's Cove, located at S. Main Street, Freeport, New York (800) 308-6798, upon prior permission obtained from the Substitute Custodian, Bryan Braley, during regular business hours.

Eugene J. Corcoran, United States Marshal, Eastern District of New York.

Dated: Patchogue, New York
January 21, 2009

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By: /s/Steven Taitz
STEVEN TAITZ, ESQ. (st9563)